



9110-9B

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2013–0052]

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Homeland Security.

ACTION: Notice of Proposed Revisions to National Environmental Policy Act implementing procedures and request for comments.

SUMMARY: The purpose of this notice is to provide an opportunity for public comment on the Department of Homeland Security (DHS or Department) draft Directive 023-01, Rev. 01 and draft Instruction Manual 023-01-001-01, Rev. 01, Implementation of the National Environmental Policy Act (herein after referred to as Directive and Instruction). Together, the Directive and Instruction serve as the Department’s procedures for implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), as amended, and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508). Pursuant to the CEQ regulations, DHS is soliciting comments on its proposed internal Directive and Instruction from members of the interested public.

DATES: Comments and related material must be received on or before (or, if mailed, postmarked on or before) [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to ensure consideration. Late comments may be considered to the extent practicable.

ADDRESSES: Relevant documents are posted at <http://www.regulations.gov> (Docket ID: DHS–2013–0052) and www.dhs.gov/nepa. These documents include: this notice, the

proposed Directive and Instruction, and a synopsis of the Department's administrative record for several proposed new NEPA categorical exclusions (CATEXs).

You may submit comments, identified by "DHS NEPA Procedures," by one of the following methods:

(1) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments electronically via docket number DHS-2013-0052.

(2) Mail: Sustainability and Environmental Programs, Office of the Chief Readiness Support Officer, Management Directorate, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0075, Washington, DC, 20528-0075.

(3) E-mail: SEP-EPHP@hq.dhs.gov.

In choosing among these means of providing comments, please give due regard to the security screening difficulties and delays associated with delivery of mail to federal agencies in Washington, DC, through the U.S. Postal Service.

All comments received, including any personal information provided, will become a part of the public record for the Department's NEPA procedures and may be posted without change on the internet at <http://www.regulations.gov> and <http://www.dhs.gov/nepa>.

FOR FURTHER INFORMATION CONTACT: Laura Shick, Environmental Protection Specialist, Department of Homeland Security, 202-603-3517, or laura.shick@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

The Department of Homeland Security (DHS or Department) encourages interested persons to submit written data, views, or comments. Persons submitting comments should include their name, address, and other appropriate contact information. You may submit

your comments and material by one of the means listed under ADDRESSES. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they were received, please enclose a stamped, self-addressed postcard or envelope. DHS will consider all comments received during the comment period.

The Directive and Instruction establish the policy and procedures DHS follows to comply with NEPA (42 U.S.C. 4321 et seq.) and the CEQ regulations (40 CFR Parts 1500-1508). Together, the Directive and Instruction apply to all of DHS, which is currently comprised of over 20 support and operational components, and help ensure the integration of environmental stewardship into DHS decision making as required by NEPA. The Directive and Instruction serve as the DHS implementing procedures for NEPA and the CEQ regulations (as required by 40 CFR 1505.1 and 1507.3) and therefore must be read in conjunction with the CEQ regulations.

The Directive and Instruction have been substantially revised to address a number of circumstances and requirements that have arisen since April 19, 2006, the effective date of the original DHS procedures (Federal Register, Vol. 71, No. 64, April 4, 2006). Revision of the Directive and Instruction, including additions to the Department's list of NEPA categorical exclusions (CATEXs), was a collaborative effort on the part of numerous DHS environmental and legal professionals from across the Department. These professionals are NEPA practitioners and environmental protection specialists with numerous years of federal NEPA experience, including experience in implementing the 2006 DHS NEPA procedures or Component-specific procedures, and legal practitioners

with advanced education and experience advising federal agency project and program managers on NEPA compliance. The DHS Components and offices whose staff contributed to the update of the Directive and Instruction include:

- Sustainability and Environmental Programs (SEP), Office of the Chief Readiness Support Officer, Under Secretary for Management, DHS HQ
- Office of the General Counsel, DHS HQ
- Federal Emergency Management Agency (FEMA)
- United States Coast Guard (USCG)
- Customs and Border Protection (CBP)
- Transportation Security Administration (TSA)
- Immigration and Customs Enforcement (ICE)
- Federal Law Enforcement Training Center (FLETC)
- United States Secret Service (USSS)
- Science and Technology Directorate (S&T)
- National Protection and Programs Directorate (NPPD)
- United States Citizenship and Immigration Services (USCIS)

When originally published in 2006, the Directive and Instruction did not apply to the Components of FEMA, CBP, or USCG; these three Components each maintained their own procedures for implementing NEPA when the Department was established in 2002. This proposed revision to the Directive and Instruction incorporates FEMA, CBP, and USCG into the Department's NEPA procedures and addresses the full scope of DHS activities to which NEPA applies. When the updated procedures are finalized and become effective, they will apply to all Components of DHS, including FEMA, CBP, and USCG. In addition, every Component will have the option of developing Supplemental

Instructions to establish how that particular Component will meet the requirements of the final version of the DHS Directive and Instruction. In a separate yet related effort, FEMA will pursue rescission of its regulations at 44 CFR 10 and replace them with Supplemental Instructions that conform to requirements of the final version of the DHS Directive and Instruction.

As the Department has matured, the requirements of its Directives System have changed. The current DHS Directives System, effective as of August 2012, establishes standards for the length, format, and content of documents such as policies, delegations of authority, directives, instructions, manuals, handbooks, etc. The 2006 Directive and Instruction do not align to the requirements of the Department's current Directives System, and therefore revisions were necessary. For example, a directive must be used to establish policy as well as high-level roles and responsibilities, and cannot exceed five pages in length; an instruction accompanies a directive and provides detail on how to comply with the requirements of the directive, such as by establishing specific roles and responsibilities, processes, systems, and program management requirements. The revised Directive establishes the policy that DHS will comply with NEPA, and the revised Instruction establishes the procedures for ensuring this compliance is implemented in an effective and efficient manner.

The requirements put forth in the revised Directive and Instruction emphasize that the NEPA process must be appropriately integrated into the performance of DHS missions and activities and decision making. The Instruction covers the following: overview of NEPA requirements, including requirements for the preparation and content of NEPA documents; management of NEPA implementation in DHS; criteria for Components to

obtain a delegation of authority to approve their respective NEPA reviews; public involvement; dispute resolution; information protected from public disclosure; procedures for emergencies; review of applications from persons or organizations outside of DHS (e.g., grant applications); and an identification of the types of DHS activities normally reviewed in a CATEX, Environmental Assessment, or Environmental Impact Statement.

Revisions were also made to the Directive and Instruction to address the requirements of laws and Executive Orders since 2006, as well as to incorporate recent CEQ guidance memoranda. Readability, clarity, and organization of the content were improved to comply with the requirements of the Plain Writing Act of 2010. The revised Instruction incorporates CEQ guidance on mitigation and monitoring; establishing and applying CATEXs; emergencies; preparation of efficient and timely environmental reviews; and environmental collaboration and conflict resolution.

The CATEXs published in 2006 are being retained and are included in the revised Instruction (Appendix A, Table 1). In addition, the following new CATEXs are proposed: one CATEX for an administrative activity; five CATEXs for real property management activities; 13 CATEXs for non-grant activities unique to FEMA's mission and authorities; and 19 CATEXs for federal assistance (e.g., grant) activities. DHS followed the CEQ guidance memorandum on "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act," dated November 23, 2010, in developing these new CATEXs. For synopses of the administrative record support for the Department's list of existing and proposed new CATEXs, see the docket and the DHS NEPA webpage at <http://www.dhs.gov/nepa>.

There are currently approximately 80 federal assistance programs in DHS (see the Catalogue of Federal Domestic Assistance (CFDA) at <https://www.cfda.gov> for the list of programs). The majority of these programs are administered by FEMA. Applicants use federal assistance from DHS, such as grant funding, to implement a variety of emergency preparedness, response, and recovery and hazard mitigation activities and projects, ranging from classroom training and purchases of portable equipment to laboratory research to facility repair, renovation, and construction. Because these activities are federally-assisted, DHS, in coordination with the recipients of grants or other assistance, must ensure they are compliant with NEPA. DHS is proposing several CATEXs for its federal assistance activities because DHS has determined these activities would normally not have the potential to have an individually or cumulatively significant impact on the quality of the human environment. These CATEXs will help ensure the timely and effective delivery of DHS assistance in an environmentally compliant fashion. These proposed new CATEXs are included in the Instruction in Appendix A, Table 1, Section N.

Several statutes, authorities, programs, and activities are unique to FEMA (i.e., not relevant to or undertaken by any other DHS component) and therefore additions to the list of CATEXs include several developed specifically for FEMA activities that would not normally have the potential to have individually or cumulatively significant impacts on the quality of the human environment. These include activities associated with the administration of the National Flood Insurance Program, and emergency and disaster response and recovery and hazard mitigation activities authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) as amended.

These proposed new CATEXs are included in the Instruction in Appendix A, Table 1, Section M.

DHS invested over three years in developing the proposed revision to its NEPA procedures. The revised Directive and Instruction were provided to CEQ in the fall of 2013 for discussion prior to this publication for public comment. CEQ will remain engaged and be asked to issue a letter prior to publication of the final Directive and Instruction as required under 40 CFR 1507.3. The Directive and Instruction published here in the Federal Register are available for a 60-day public comment period. The comments received will be analyzed and any appropriate revisions will be made to the documents. The Directive and Instruction revised in response to public comments will be shared with CEQ prior to final adoption and implementation. A Notice of Final Directive and Instruction will be published in the Federal Register with a 120-day waiting period before the new NEPA procedures become effective. This notice will present the response to the public comments received on the proposed revised Directive and Instruction.

A copy of this Federal Register publication and the proposed Directive and Instruction and supporting documents are available on the internet at www.regulations.gov and <http://www.dhs.gov/nepa>.

Dated: May 29, 2014.

Teresa R. Pohlman,

Director of Sustainability and Environmental Programs.

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